

## REMARKS

This divisional patent application cancels claims 1-45 of the original specification filed in 1994, and adds new claims 46 – 49.

Claim 49 is copied in whole or in part from US Patent 6,567,689 to Burbank et al. issued May 20, 2003 ; having a filing date on its face of Feb. 26, 2002, a publication date of Oct 31, 2001 listed on its face, and claiming priority to an application filed Feb. 2, 1999.

Claim 47 and Claim 48 are copied in whole or in part from US Patent Publication US2002/0188196 published Dec. 12, 2002 in the names of Burbank et al. This publication has a priority claim on its face to an application filed Feb. 2, 1999.

Support for the added claims is found in the specification and drawings filed in September 16, 1994. For instance, but without limitation:

Support can be found at page 23, lines 4-6, which teaches a marker can be made of a biodegradable material visible using an imaging system; page 3, lines 12-16 (disclosing known imaging systems including x-ray, MRI, ultrasound); page 6, lines 6-7 (markers should be easily detected using state of the art imaging techniques); page 22, lines 4-6 (embodiment can be used with a stereotactic or other guidance system such as ultrasound);

It is respectfully urged that a mass of a biodegradable material, such as a biodegradable polymer is bio-resorbable .

Support can also be found at Page 8, lines 1-5 which discloses pushing marker elements through a tube with a mandrel; Page 15, lines 15-26 which discloses deploying marker elements through various biopsy instruments; and Page 17, lines 8-24 which discloses a plurality of

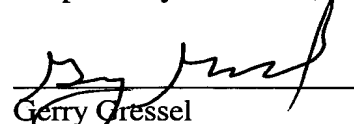
markers may be deployed axially through the distal end of tube using a mandrel 98, or they can be deployed radially through a side port. It is respectfully urged that the disclosed mandrel is equivalent to a plunger and ejector as those terms are used in the above patent and publication.

Support is also found at Page 9 which discloses using marker elements having shapes to denote different tissue locations or events (i.e. discloses recognizable shapes); and Page 19 discloses using differently shaped markers to distinguish between procedures.. See also page 22 disclosing jack shaped marker in Figure 18, which would be a recognizable shape not normally found in the body.

Support is also found at page 22, lines 20-27 which discloses small beads or pellets having a diameter of about 500 microns; and page 9, lines 22 which discloses marker materials including non-metallic materials and salts. It is respectfully urged that disclosure of "small beads or pellets" and "salt" provide support for claims directed to the "particulate marker material" and "powder" as those terms are used in the claims of US 6,567,689 and US 2002/0188196.

The Examiner is respectfully requested to consider the claims added by amendment in this divisional application.

Respectfully submitted,



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